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OFFICE OF PETITIONS

In re Patent No. 6,865,737 :
Issued: March 8, 2005 : DECISION ON APPLICATION FOR
Application No. 09/645,014 : PATENT TERM ADJUSTMENT
Filed: August 23, 2000 :
Atty. Dkt. No.: P-2138D1 :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN THE NOTICE OF ALLOWANCE," filed January 13, 2005. This timely filed request is being treated under 37 CFR 1.705(b).

The application for patent term adjustment ("PTA") under 37 CFR 1.705(b) is hereby **GRANTED**.

Applicant requests that the Determination of Patent Term Adjustment be corrected from 393 days as indicated on the Determination of Patent Term Adjustment mailed October 27, 2004 to an adjustment of 464 days.

Applicant argues that the adjustment of 587 days for Office delays under 37 CFR 1.702(a)(1) should be reduced 123 days under in accordance with 37 CFR 1.704.

A review of the application history reveals that at the time of allowance, an adjustment of 587 days could be attributed to the Office¹.

¹ In accordance with 37 CFR 1.702(a)(1) an adjustment 491 days could be attributed to the Office for failure to mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed. The adjustment began October 24, 2001 and ended February 26, 2003. See, 37 CFR 1.703(a)(1). In accordance with 37 CFR 1.702(a)(2), an adjustment 96 days can be attributed to the Office for failure to respond to a reply under 35 U.S.C. 132 U.S.C. 134 not later than four months after the date on which the reply was filed. The adjustment began October 26, 2003 and ended January 29, 2004. See, 37 CFR 1.703(a)(2).

The adjustment of 587 days is reduced 123 days under 37 CFR 1.704(b) for applicant's failure to engage in reasonable efforts to conclude prosecution².

The Office errantly entered March 28, 2001 as the date a response to the Notice to File Missing Parts of Nonprovisional Application was filed. The Notice was mailed October 16, 2000 and a proper response was in fact timely submitted on December 26, 2000.

Thus, at the time of Allowance, the application was entitled to an adjustment of 564 days as argued by applicant.

Receipt of the required application fee of \$200.00 is hereby acknowledged.

This application file will be forwarded to the Certificate of Corrections branch for issuance of a certificate of correction to indicate that the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 564 days.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.

Karin Ferriter

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
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² The adjustment of 587 days was properly reduced 30 days, the period of time in excess of three months taken to reply to any notice or action by the Office under 37 CFR 1.704(b). The delay began May 27, 2003 and ended June 25, 2003. The adjustment of 587 days is further reduced 2 days in accordance with 37 CFR 1.704(c)(8). The reduction began June 25, 2003 and ended June 27, 2003. The adjustment of 587 days is further reduced 91 days in accordance with 37 CFR 1.704(b). The reduction began April 30, 2004 and ended July 29, 2004.